

INDIANA LEGISLATURE

[Omissions and omissions of this report for want of space in these columns will appear in an appendix to Volume XXXII of the *Legislative Reports*.]

IN SENATE.

SATURDAY, APRIL 11, 1885.

TELEPHONE RENTALS.

The Senate resumed the consideration of the bill (H. R. 41) pending at the adjournment yesterday.

Mr. McCULLOUGH: I am in favor of regulating all corporations. I have no interest in telephones other than I have one in my office. Telephone companies are a monopoly, and being a monopoly no action at this time would be more popular than to vote for the bill, but my convictions as to what would be to the best interests of the people and of the State will compel me to vote against this bill. The Committee on the Judiciary [of which Mr. McCullough is Chairman] attempted to get at the facts in this case. The bill in part is unconstitutional, and, in fact, a fraud. I believe the Democratic party is in favor of regulating corporations, but it should proceed deliberately and judiciously. The cost of the plant is \$1,624,438.70 in the Central Union Telephone Company. It is probably true some part of this has been a donation by the people, as has been suggested. It is a clear proposition that property can not be taken away from them, nor can they be prohibited from using that property. It is a written as well as an unwritten, plain proposition, that no man's property can be taken away from him without just compensation. It is proposed in this bill to reduce the telephone rental from \$5 to \$3 a month. What is the result? The evidence is that the profit is but 5-6 per cent. Grant that testimony is in the interest of telephone companies. If a man will testify falsely one time he will testify falsely again, and the same testimony will be given if required in court. Say your man is indicted; use telephone books are in Chicago; the agent says "We can't sell those instruments for less than \$15," and who is going to produce the evidence? There can be no witness brought here from outside the State. What is the result? These same officers that have given testimony here will come into court and will say they can not afford to put in telephones for \$5, as is it in amount to a prohibition the court is bound to find the bill, if passed, is unconstitutional. This Legislature will be left in the attitude of attempting to confiscate property. The Democratic party is not in favor of confiscation, and does not want to vote such a record. I am not willing to take that step, however popular it may be.

Mr. WILLARD: There is no Senator who has a personal interest or one whose constituents could be less affected than mine, as I do not know of a telephone exchange in my district; but I can not, as a Senator here, permit the opponents of this bill to deny its constitutionality without speaking a word of defense for it. Where is the section in the Constitution that shows this bill unconstitutional? The States of Georgia, Tennessee, Kentucky and Wisconsin all at them have regulated by statute the charges of railroad companies, both upon freight and passengers. And such legislation has been sustained as being within the limit of the sovereignty of the State by the Supreme Court of the United States. I have no sympathy with the plea against striking down monopolies. I believe in striking down monopolies. The Democratic party believe in striking down monopolies, and I believe the people of the State will approve the action of the Legislature in striking down this monopoly, as I believe it will. I desire to read from the case of Patterson vs. the State of Kentucky. I say that case strikes down the last vestige of the argument of the Senator from Gibson (Mr. McCullough), and this case was approved by the Supreme Court of this State in 63 Indiana. (Reads Ky. 9, 403, and comments.) This is exactly the object of this bill, H. R. 41, to protect the many against the injurious conduct of the few. And so I say the constitutionality of this bill, under the rulings of our own Supreme Court, is not an open question.

Mr. HILLIGASS: This discussion, I think, has fully met the question of the constitutionality of this bill raised by the Senators from Wayne (Mr. Foulke) and Gibson (Mr. McCullough). I demand the previous question.

The Senate seconded the demand for the previous question, and under its operation the Senate agreed to substitute the favorable minority for the unfavorable majority report by—yeas 24, nays 14.

Mr. CAMPBELL, of Hendricks, Campbell, of St. Joseph, Davis, Faulkner, Farley, Fowler, Hilligass, Johnson, of Tippecanoe, Marshall, McCullough, McIntosh, Shively and Smith, of Jennings, Mier, Willard, Winter and Youche explaining their votes. [See Appendix.]

The majority report, as amended by the substitution of the minority report, was concurred in by—yeas 34, nays 14.

Mr. CAMPBELL, of Hendricks, Campbell, of St. Joseph, Davis, Faulkner, Farley, Fowler, Hilligass, Johnson, of Tippecanoe, Marshall, McCullough, McIntosh, Shively and Smith, of Jennings, Mier, Willard, Winter and Youche explaining their votes. [See Appendix.]

AFTERNOON SESSION.

Mr. YOCHE made an ineffectual motion—yeas 21, nays 20—to take up the bill (H. R. 92) concerning the liability of corporations for injuring employees—two-thirds not voting to suspend the regular order.

JOHN MARTIN'S CLAIM.

The bill (H. R. 361) to pay John Martin \$35,016 for work and labor done and material furnished the female department of the Hospital for the Insane, was read the third time.

The majority report recommends the passage of the bill and the minority report recommends that it lie on the table.

Mr. SMITH, of Jay, moved to substitute the minority for the majority report.

Mr. FOLKE: The testimony before the committee has been exceedingly conflicting; we differed among ourselves. I will try to state the evidence (which he proceeded to do). He favored the passage of the bill.

Mr. McCULLOUGH: Some members must be in great doubt concerning this matter; some of them have changed their mind since the adjournment for dinner. I mention this to show the great doubt in reference to this case. Under the law and under the contract I am exceedingly doubtful whether he should receive. I want to show some of the points surrounding this matter and how this controversy has arisen. It is largely a question of judgment, for instance: Mr. Martin has been paid for a smoke stack \$6,300. By the measurement allowed in this bill you will pay for that same stack \$12,800.00. During this session a bill was passed providing for securing the furnaces 150 feet away from the building, and in order to do that it is necessary to build a smoke stack. The second has given notice that they want that smoke stack duplicated. I am told by the Board—Dr. Harrison, the President told me, and it is reliable, that the estimate of one of the largest contractors in the city of Indianapolis on that smoke stack is \$3,500.

Mr. CAMPBELL, of Hendricks, came to the conclusion with reluctance to sign the majority report of the committee. It is my impression Mr. Martin would not have guessed there was more than \$3,000 or \$10,000 due. I should have been much better satisfied to have that building measured now, according to the contract but that was impracticable. I don't want to guess away a man's right.

Mr. SMITH, of Jennings: I have not the voice to make a speech of any considerable length. As I understand it the committee only disagreed on one thing, and that was as to how many bricks there is in that building, measuring it by the rules in the contract. By that contract both parties are bound. It is true the board tried by some entry drawn by an attorney to preclude John Martin from further claim under that contract, without the knowledge of John Martin. The record made by the committee will cost the State some \$220; and since the General Assembly adjourned two years ago there have been bills paid by the State in resisting this claim that will amount to \$1,600.

Mr. WEIR: In advocating the justice of this claim said, it will not do to put off the claim of a citizen of Indiana, because this is the last day of the session. There was a general feeling that there never was a settlement with John Martin till 1881. You hear everywhere that the credit of the State is not good, because a claimant has to wait so long and be at so much expense in order to get a claim allowed, which is a fact and it is a shame and a disgrace to the State. From the evidence before the committee I should have been embarrassed, as to how to vote on this claim, but the record in the case and circumstances surrounding it, have made it appear a just and righteous claim.

The Senate took a recess 7:30 o'clock p. m.

NIGHT SESSION.

Mr. FAULKNER: I have examined the record in this claim, and I see that men as honest as ever drew the breath of life have certified that the claim is settled. They are not interested if they are dead or alive in new measurement of this work. The claimant said once, so and so was due; and now after they are dead he comes in with a new measurement. If it runs on a few years it will get to be \$100,000, for it is growing bigger. I say there is not one dollar due on this claim, for it has been twice adjudicated.

Mr. SMITH, of Jennings, demanded a call of the Senate.

It was ordered and, being taken, discovered 47 Senators present and answering to their names.

Further proceedings under the call were dispensed with.

Mr. MCINTOSH: If I were to consult my own feelings and pay no attention as to whether it is a just claim or not, I would vote for it. I don't know anything about the claim but what I am told, but I believe this bill is a fraud and a swindle. I want to put my condemnation upon the assertion being continually made here and elsewhere that the State of Indiana is dishonest. If you all could see the record as made on this claim by John Martin himself you would condemn it. When you vote for this bill you vote to sink that much money out of the Treasury of the State of Indiana.

Mr. SMITH, of Jay, spoke in opposition to the bill.

The motion to substitute the minority report (that the bill lie on the table) for the majority report (that the bill do pass) was rejected by yeas 18, nays 29.

The majority report was concurred in, and the bill passed by yeas 28, nays 19.

OFFICERS LIABLE FOR COSTS.

Mr. SMITH, of Jay, from a Conference Committee on the bill S. 76, submitted a report, which was concurred in.

SPECIAL APPROPRIATION BILL.

The special order being the bill H. R. 457 it was taken up.

Mr. SMITH, of Jay, moved to discharge the bill from the order.

The motion was rejected by yeas 22, nays 26.

On motion by Mr. FOLKE the Senate resolved itself into a Committee of the Whole (Mr. Foulke in the chair).

Mr. MACY moved to add an item allowing \$200 to William H. Schlatter for publishing a list of bills in the Journal of 1881.

Mr. SMITH, of Jay, moved that the committee rise and ask leave to sit Monday morning at 10 o'clock.

The motion was rejected upon a division—affirmative, 22; negative, 24.

The motion (Mr. Macy's) was agreed to.

Mr. WILLARD moved to add an item to Article 4, a year and services as Clerk in 1879.

It was agreed to.

Mr. WEIR moved an item to allow \$200 as a contingent fund to be placed at the disposal of the Governor for the employment of counsel in defending suits brought against the State.

It was agreed to.

Mr. CAMPBELL, of St. Joseph, moved to adopt item 3, to allow the Perrin & Gaff Manufacturing Company \$8,500 for rebuilding the destroyed bridge at the State Prison South, which item had been passed over.

The motion was rejected.

Mr. SELLERS moved to add an item of \$20,000 for a monument at the Tippecanoe battle.

Mr. YOCHE made an ineffectual motion that the committee rise and ask leave to sit again Monday morning at 10 o'clock.

Mr. SMITH, of Jay, moved, ineffectually, that the committee rise, report progress and ask leave to sit again Monday at 2 o'clock p. m.

Mr. YOCHE moved to amend by adding \$25,000 for a monument at Pigeon Roost, Clark County.

This amendment was ruled out of order.

The amendment (Mr. Sellers') was rejected.

Mr. RICHARDSON moved to amend by adding an item for ice furnished the session of 1883, \$10,55.

It was agreed to.

Mr. BROWN moved that the committee rise, report progress and ask leave to sit again Monday afternoon.

The motion was agreed to.

Accordingly the committee rose, reported progress and asked leave to sit again Monday afternoon.

The report was concurred in.

COLLECTION OF DELINQUENT TAXES.

On motion by Mr. WILLARD the Senate took up the bill (H. R. 543).

Mr. SMITH, of Jennings, moved that the report of the committee recommending that the bill be passed as it came from the House be adopted.

Mr. WEIR demanded the previous question.

The demand was seconded.

The question referred to order the main question put by yeas 17, nays 3.

Mr. SMITH, of Jennings, moved to defeat the very object it is intended to reach. The amendment reported by the committee will put into the Treasury's hands the machinery to operate the other provisions of the bill.

The motion (Mr. Smith's) was rejected by yeas 14, nays 21.

On motion by Mr. CAMPBELL, of St. Joseph, the substitute reported by the committee was adopted.

The bill passed by yeas 39, nays 32.

CONCERNING TAXATION.

On motion by Mr. BROWN the bill (H. R. 200) to exempt highways from taxation, which before failed for want of constitutional majority, was passed by yeas 27, nays 12.

On motion by Mr. CAMPBELL, of St. Joseph, the bill (H. R. 41) to legalize the official act of Drainage Commissioners not urged in the act of 1863, was read the second and third times and passed by yeas 33, nays 1.

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that the Senate refused to concur in the House amendments to the bill (S. 76), and a conference committee being asked for, it was granted, Messrs. Sears and Moody on the part of the House.

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